

## M E M O R A N D U M

**Date:** September 30, 2010  
**To:** 2010 Tax Credit Recipients  
**From:** William J. Pavão, Executive Director  
**Subject:** 2010 Carryover Allocation Documentation

Project owners in receipt of low-income housing tax credit reservations made in calendar year 2010 must receive from the California Tax Credit Allocation Committee (TCAC) either: (1) IRS Form(s) 8609 if the building(s) have been or will be placed-in-service by December 31 of this year; or, if not to be placed-in-service (2) by November 1, a 2010 Carryover Allocation pursuant to IRC Section 42(h)(1)(E), as amended.

Projects requiring a Carryover Allocation of 2010 Tax Credits must submit all of the following by **November 1, 2010** to receive a Carryover Allocation:

- 1) A completed Carryover Allocation form;
- 2) Evidence that the land has been purchased or leased (unless exercising the 12-month extension, then see below);
- 3) Completed Exhibits B, C, D (Exhibits can be located on the TCAC website at: <http://www.treasurer.ca.gov/ctcac/requirements/carryover.asp>); and
- 4) Updated Application Pages (**Please include an electronic MS Excel version in the form of a CD of the Updated Application Pages**)
- 5) The applicable allocation fee (Please refer to Preliminary Reservation Letter).

**FOR SECOND ROUND AWARDEES ONLY**

- 6) An executed Letter of Intent (LOI) from the Project's Equity Partner (if available), otherwise due within 90 days of the Credit Reservation date (Please refer to the Appendix for requirements: <http://www.treasurer.ca.gov/ctcac/2010/attachments/appendix.pdf>).

If the project has already met the "10% test", Exhibit A, Parts I and II should also be submitted with your Carryover request. However, projects will be granted up to 12 months after the date that TCAC executes the Carryover Allocation Agreement to submit evidence that the 10% test has been met, that the land has been purchased or leased, and that site control was maintained to the closing date of the purchase or lease. **Please note that even when requesting the 12-month extension for meeting the 10% test, you must still submit: A Carryover Allocation Agreement with item number 4 completed under part 1, evidence that site control was maintained from the application filing date to November 1, 2010, applicable exhibits, and the required fees by November 1, 2010.** The Carryover Allocation Document is enclosed and the Exhibits are available on our website (<http://www.treasurer.ca.gov/ctcac/requirements/carryover.asp>).

While all other documentation required to meet the Carryover Allocation requirement is listed in your Reservation Letter and on pages 5 and 6 of the Carryover Allocation Agreement, this memorandum is intended to address: (i) Exhibits A and E, the verification and documentation requirements regarding costs incurred, (ii) Exhibit B (Election to Fix the Credit Percentage at Time of Binding Agreement form), (iii)

Exhibit C (Electing the Gross Rent Floor form) and (iv) Exhibit D (Owner Acknowledgment of IRC Section 42 (h)(6)(E)(ii)), to the Carryover Allocation Agreement.

**Verification and Documentation Requirements – Exhibit A (to be submitted when the 10% test has been met)**

Treasury Regulations Section 1.42-6(c)(2) provides instructions to Housing Credit Agencies regarding verifying that costs of more than 10 percent of the reasonably expected basis in the project have been incurred. Internal Revenue Code Section 42(h)(1)(E) now extends the deadline for incurring those costs to no later than 12 months after the date of the Carryover Allocation.

Pursuant to the regulations, TCAC requires project owners to obtain from an attorney or certified public accountant (“tax professional”) a written certification (Exhibit A) to TCAC that: (1) the tax professional has examined all eligible costs incurred with respect to the project; and (2) based upon this examination, it is the tax professional’s belief that the project owner incurred more than 10 percent of its reasonably expected basis in the project no later than 12 months after the date of the Carryover Allocation pursuant to IRC Section 42(h)(1)(E)(ii) as amended. Specifically, the tax professional’s certification must address the following issues:

- The land has been acquired either through purchase evidenced by a deed, (existing building(s) if applicable) or through the execution of a ground lease. As part of this procedure, a tax professional must be satisfied by obtaining and examining copies of the title report, lease agreement, etc., that evidences a valid transfer of the property as required by state law purposes. The tax professional must also verify the acquisition date and the property cost.
- For any costs incurred pursuant to executed fee agreements (i.e., developer, architectural, etc.), an analysis must be done as to the actual services rendered pursuant to such agreement and the agreed upon amounts to be paid for each. Merely making payments to an entity does not constitute an “incurred” cost if the corresponding services have not yet been performed. A review of the overall reasonableness must be made with respect to the portion of any fee being included as of the date of the Carryover Allocation Agreement.
- For other incurred costs to be included (i.e., construction hard costs, soft costs that are to be capitalized, etc.), the project owner must provide evidence reflecting the appropriate amounts and time period covered.
- The report must address that “at a minimum” the requirements of IRC Section 42(h)(1)(E) and Treasury Regulations Section 1.42-6 have been satisfied. To the extent that costs exceeding such requirements have been incurred, as of the date of the Carryover Allocation Agreement or no later than 12 months after the date of the Carryover Allocation, TCAC does not require verification of these excess amounts at this time. For example, if the acquisition of the land (and/or existing building(s), if applicable) would satisfy the requirements, the report could be limited to these costs, even if the TCAC Certification of Costs Incurred form reflects additional costs.
- The report must specify the name of the entity that incurred the cost.

A representative accountant’s report covering the above is enclosed, but requires modification. This report must be attached to the TCAC Certification of Costs Incurred in the Carryover Allocation package. The procedures discussed in the representation section of the report must be followed.

**Exhibit B - Election to Fix the Credit Percentage at Time of Binding Agreement (Not required for “New Construction” or “Rehabilitation-Only” projects).**

**Exhibit B is effective ONLY if the owner and TCAC execute the Carryover Allocation Agreement in the same month.** Please note that TCAC must receive a completed Carryover Allocation Agreement package by **October 29, 2010** in order for the credit percentage to be fixed. The Housing and Economic Recovery Act of 2010 (H.R. 3221) that was passed into law established the 70% PVC rate at 9%. Exhibit B will only be required of 9% projects that have also been reserved acquisition credit or include 30% PVC eligible basis and wish to fix the 30% PVC rate for October 2010.

The credit percentage is generally determined in the month the project is placed-in-service. However, pursuant to Treasury Regulations Section 1.42-8, the project owner may elect to use the credit percentage determined in the month the project owner and the Housing Credit Agency enter into a binding agreement to allocate the Credit to the building. Due to the Housing and Economic Recovery Act of 2010 (H.R. 3221) being passed into law, this Election to Fix the Credit Percentage does NOT apply to those using only the 70% PVC rate. The procedure for making the election is contained in TCAC’s Exhibit B, Election to Fix the Credit Percentage at Time of Binding Agreement of the Carryover Allocation package.

The completed, dated, and executed Exhibit B must be notarized and returned with the Carryover Allocation package, if one intends to fix the credit percentage prior to the placed-in-service date. The applicable credit percentage identified in Exhibit B is effective if the owner and TCAC execute the Carryover Allocation Agreement in the same month. **Therefore, those applicants intending to fix the credit percentage should submit their carryover allocation package for TCAC execution prior to the deadline (in the month of October) to ensure TCAC executes the document in the same month.**

**Exhibit C - Election to Fix the Gross Rent Floor (to be submitted no later than November 1, 2010)**

Revenue Procedure 94-57 addresses the effective date establishing the gross rent floor, as defined in IRC Section 42(g)(2)(A). In general, the gross rent floor is established on the date of allocation. However, a project owner may elect to establish the project’s floor at the placed-in-service date. The procedure for making the election is contained in TCAC’s Exhibit C of the Carryover Allocation package, electing the Gross Rent Floor. If a project owner does not make an election, the IRS considers the floor to be established on the date of allocation (whether by issuance of Form(s) 8609 or a Carryover Allocation Agreement).

Whether the project owner elects to establish the floor at the time of the Carryover Allocation or at the placed-in-service date, TCAC requires a signed and completed Exhibit C to be submitted with the Carryover Allocation package.

**Exhibit D - Owner Acknowledgment of IRC Section 42(h)(6)(E)(ii) (to be submitted no later than November 1, 2010)**

IRC Section 42(h)(6)(E)(ii), which will be incorporated into a regulatory agreement between TCAC and the project owner, requires that the regulatory agreement and the use restrictions contained in it may be terminated due to a transfer of the project to a lender as a result of a foreclosure or instrument in lieu of foreclosure or similar instrument (unless the Secretary determines that such acquisition is part of an arrangement with the taxpayer a purpose of which is to terminate such period), provided that the following shall not be permitted before the close of the three (3) year period following such termination.

- (a) the eviction or the termination of tenancy (other than for good cause) of an existing tenant of any low-income unit, or
- (b) any increase in the gross rent of such unit not otherwise permitted under Section 42.

Accordingly, project owners must agree to have their lenders acknowledge that as a condition to an allocation of Tax Credits for a project, the project owner and TCAC must enter into a recorded regulatory agreement which sets forth certain use restrictions affecting the project. The lender must further acknowledge that, among other things, such documents will ensure that if the project is acquired by foreclosure or instrument in lieu of foreclosure, the project will thereafter be subject to a three-year period during which evictions, terminations of tenancy and rent increases for tenants of any low-income units in the project will be restricted.

**Updated Application Pages (to be submitted along with an electronic MS Excel version in the form of a CD no later than November 1, 2010 and again when 10% test has been met)**

If project costs have increased from those presented at the time of application, owners must demonstrate the feasibility of the project by documenting any additional sources and/or increased debt service. Updated sources and uses and cash flow projections must be delivered on updated versions of the application pages.

If project owners have incurred significant cost increases and are seeking additional financing, please refer to Regulation Section 10325(f)(3) and (8) regarding limitations on increasing and substituting financing.

Additionally, if the project name, number of residential buildings, project address (not actual location) or other pertinent project information has changed, please summarize the changes in a narrative form. The applicant may authorize TCAC to make any corresponding changes to the body of the Carryover Allocation Agreement, by making and initialing the changes (such as number of residential buildings, address or name change) to the Carryover Allocation Agreement.

Please note once again, that Carryover Application package along with the applicable exhibits, updated application pages, and the applicable allocation fee (please refer to Preliminary Reservation Letter) **must be received by TCAC no later than 5:00 p.m. on November 1, 2010.** For further clarification, please contact your regional analyst.